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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 234

PAUL GINSBURG, Petitioner,

v.

HORACE STERN and PATRICK N. BOLSINGER,
Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

In the District Court (Civil Action No. 12643) as in the Court of Appeals for the Third Circuit (No. 14137), no opinion was filed, but only an unreported order of the Court of Appeals: 314 F.2d 500.

QUESTION PRESENTED

Whether certiorari should be granted on the identical facts presented to this Court at No. 634 October Term, 1961 and as to which certiorari was denied on February 19, 1962 (368 U.S. 987; 7 L.ed.2d 525; 82 S.Ct. 603) and rehearing denied on March 19, 1962 (369 U.S. 826; 7 L.ed.2d 792; 82 S.Ct. 827), where no new or additional facts have been presented.

STATEMENT OF THE CASE

In the District Court, this suit was entered by petitioner against Horace Stern, then the Chief Justice of the Pennsylvania Supreme Court, and Patrick N. Bolsinger, the Prothonotary of said court, for alleged violation of plaintiff's civil rights. The District Court dismissed the complaint (125 F.Supp. 596), and on appeal the Court of Appeals affirmed on June 2, 1955, holding that plaintiff "has not stated a cause of action cognizable in a United States District Court under the Civil Rights Acts * * *" (225 F.2d 245).

On said appeal, and on two later appeals by the plaintiff, the Court of Appeals allowed costs to defendants, the respective amounts being $215.25, $100.05 and $11 1.00. These costs were eventually taxed by the clerk of the District Court and entered by that court as judgmen s against the plaintiff and his garnishee. Shortly there fter, by means of an attachment execution proceeding, the costs were paid in full and the judgments satisfied.

Since 1959, plaintiff has tried repeatedly to have the judgments for costs vacated. However, the orders of the District Court refusing so to vacate invariably have been affirmed by the Court of Appeals: on February 17, 1959 (263 F.2d 458); on January 30, 1961; on October 19, 1961 (295 F.2d 698); on March 2, 1962 and June 14, 1962. Plaintiff applied to this Court at 634 October Term, 1961 for certiorari to review the decision of October 19, 1961. Certiorari was denied on February 19, 1962 (368 U.S. 987); and rehearing denied on March 19, 1962 (369 U.S. 826).

Notwithstanding the finality of this last decision, plaintiff again asked the District Court to open and vacate the judgments for costs. When the court refused, he again appealed to the Court of Appeals and when the latter dismissed the appeal (314 F.2d 500), he filed the current petition for certiorari.

The matter of which he presently complains is the identical matter of which he complained in his earlier application for certiorari (No. 634 October Term, 1961), namely, the refusal of the District Court and the Court of Appeals to vacate the judgments for costs.

ARGUMENT

Certiorari should be refused for a number of reasons:

1. This Court previously denied certiorari on the same set of facts as now presented.

2. The question raised is now moot, inasmuch as the costs have been paid with plaintiff's funds, and the judgments satisfied.

3. The costs in question were merely defendants' printing costs on appeal, and to this day plaintiff has not asserted that they were not incurred by the defendants. Rules 35 (2) and 35 (4) of the Court of Appeals for the Third Circuit (28 U.S.C.A. Rules, p. 224) provide that:

> "In all cases of affirmance of any judgment, order or decree * * * costs shall be allowed to the appellee or respondent, unless otherwise ordered by the court," and "the actual cost of printing briefs * * * shall be taxed as costs in the case."

4. In taxing the costs the clerk of the Court of Appeals violated no rule of that court.

5. Petitioner's claim is long since *res judicata*.

The first three reasons above require no argument. They are self-sustaining. Reasons 4 and 5 were argued at length when the case was last before this Honorable Court, and reference is respectfully made to respondents' brief in opposition to the petition for writ of certiorari at No. 634 October Term, 1961, in this Court. To reprint

the argument there made would only clutter up the record.

Certiorari should again be denied.

Respectfully submitted,

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July, 1963
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